IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 30TH JANUARY 2007 / 10TH MAGHA 1928

WP(C).No. 1600 of 2007(M)

PETITIONER:

ABDUL RASHEED,
VALIAKADAVEETTIL, POTHENCODE, TRIVANDRUM.

BY ADV. SRI.SIBY MATHEW
SRI.PHILIP J.VETTICKATTU

RESPONDENTS:

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1. THE SUB INSPECTOR OF POLICE,
POTHENCODE POLICE STATION, POTHENCODE,
TRIVANDRUM.

2. ALL KERALA TAXI DRIVERS' WELFARE ASSOCIATION,
POTHENCODE, TRIVANDRUM-695 584, REPRESENTED BY
ITS SECRETARY, SRI. SUNI.

3. POTHENCODE GRAMA PANCHAYAT (SPECIAL
GRADE), POTHENCODE P.O., TRIVANDRUM-695 584.

R1 BY GOVT.PLEADER SRI.MATHEW G.VADAKKEL
R2 BY ADV. SRI.BLAZE K.JOSE
R3 BY ADV. SRI.M.RAJAGOPALAN NAIR
SRI.G.BIJU

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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W.P.(C) No.1600 OF 2007

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DATED THIS THE 30TH JANUARY, 2007

J U D G M E N T

It appears to me that the petitioner is having a genuine grievance. He constructed a new two storied commercial building in Sy.B13/4/1 on the main junction of the 3rd respondent-Panchayat with the objective of letting out the same for commercial purposes. The construction was on the basis of the sanction and permit from the Panchayat. After construction, the rooms were let out to tenants who are now carrying on business thereon. On 30.1.2001, the 3rd respondent passed resolution No.15 locating taxi stand as well as stand for autorickshaws. Ext.P1 is copy of that resolution. According to Ext.P1 resolution, taxi cars are to be parked on the southern side of the M.T.Theatre. Under Ext.P1 no other place had been earmarked as taxi stand or cart stand or public landing place by the Panchayat. Ext.P1, the petitioner points out, has been passed by the Panchayat in exercise of its powers under Section 227 of the Kerala Panchayat Raj Act, 1994. Pursuant to Ext.P1, vehicles were being parked on the southern side of the gate of the M.T.Theatre. Ext.P2 is the rough sketch showing the location of the building of the petitioner and the area earmarked for bus stops, taxi stands etc. as per Ext.P1. The

petitioner's grievance is that recently the Panchayat has passed a fresh resolution Ext.P4 shifting the taxi stand to the very front portion of the petitioner's building, thereby obstructing the ingress and egress to his shop. He relies on Ext.P3 photograph to show that on account of the new decision Ext.P4, ingress and egress to his shop rooms is being obstructed. The petitioner impugns Ext.P4 on several grounds. He contends that previous sanction of the Regional Transport Authority has not been obtained as contemplated by Section 227 of the Panchayat Raj Act and Rules 3, 4 and 5 of the Kerala Panchayat Raj (Landing places, Halting places, Cart Stands and other Vehicle Stands) Rules, 1995. According to him, there has been no public notice or hearing of objections as contemplated therein. He also refers to Rule 6 which provides that sides of roads cannot be used as cart stands. Ext.P4, he contends, violates the provisions of the Panchayat Raj Act, the Rules and the Kerala Motor Vehicles Rules also. Aggrieved by Ext.P4, the petitioner approached this Court and filed W.P.(C)No.60 of 2006. This Court directed the Regional Transport Authority to take a final decision on the request said to have been made by the 3rd respondent for determination and approval of the parking place, after hearing all concerned parties including the petitioner, within a period of

three weeks from the date of receipt of copy of the judgment. Ext.P5 is copy of that judgment. The petitioner alleges that pursuant to Ext.P5 no action was taken in the matter of disposing of the request said to have been made by the Panchayat to the R.T.A. and therefore he filed Cont.Case No.1298 of 2006 before this Court. But in the Contempt Case, the R.T.A., Thiruvananthapuram filed an affidavit stating that the Panchayat had not at any time approached the R.T.A. for consent as contemplated by Section 227 of the Panchayat Raj Act. Ext.P6 is copy of that affidavit. The petitioner points out that in Ext.P6 it is stated that parking of many vehicles in front of the petitioner's shopping complex results in decreasing the width of the road and that such parking will adversely affect the convenience of the travelling public. Thereafter the R.T.A. considered the request of the Panchayat as item No.1 in its next meeting held on 11.12.2006 and took a decision to reject the request of the Panchayat on the ground that the taxi stand at the proposed place in front of the petitioner's shop in the junction of the Panchayat will cause inconvenience to the travelling public and create traffic jam due to the narrowness of the road. Ext.P7 is copy of that decision. The petitioner complains that in spite of Ext.P7, taxi cars and autorickshaws are still being parked in

front of his shop and that such parking obstructs the ingress and egress to his shop. The travelling public as well as customers are put to considerable injury and hardship on account of this. The petitioner refers to the judgment of this Court in **Joseph v. District Magistrate** (1996 (2) KLT 490) and contends that the parking of vehicles in front of his shop infringes his right as the owner of property by the side of the highway for having private right of access as well public right of passage which is a valuable right available to the public and persons like the petitioner.

2. On these averments, the petitioner raises various grounds and prays that Ext.P4 be quashed; that a writ of mandamus be issued commanding the 1st respondent to implement Ext.P7 order and ensure that taxi and autorickshaw stand be shifted from the present site as ordered in Ext.P7; that a declaration be issued that the petitioner, shop owners and customers are entitled to ingress and egress to the petitioner's shopping complex without obstruction by the parking of taxi cars and autorickshaws and by the functioning of the taxi stand; and that a declaration be issued that Ext.P4 can be implemented only after getting sanction from the R.T.A. in terms of Section 227(2) of the Kerala Panchayat Raj Act, 1994.

3. Subsequently the petitioner has produced Ext.P8 which is in fact the text of the resolution by which in cancellation of the earlier resolution Ext.P1 it is decided to have taxi parking in front of the petitioner's shopping complex. It is stated that Ext.P4 is not the resolution but only a letter by the Panchayat to the 1st respondent-Sub Inspector of Police to give protection for implementing Ext.P4.

4. The Secretary of the Panchayat has filed a counter affidavit through which the Panchayat tries to justify Ext.P8 resolution. According to this counter affidavit, that resolution and for that matter Ext.P4 are not illegal or contrary to the provisions of the Panchayat Raj Act or the Rules. It is the Panchayat which is having the right to prescribe restrictions or changes in the parking spaces and bus stops. The Panchayat has given requisition to the R.T.A. for sanction. Consultation with the R.T.A. is only an invitation. It does not take away the right of the Panchayat to prescribe cart stand and bus stops. The counter affidavit refers to the judgment of this Court in **Sukumaran Nair v. Secretary, Vazhoor Grama Panchayat** (2003 (2) KLT 903) and also in **Sunny Joseph v. State of Kerala** (2003 (3) KLT 247) and contends that the Panchayat which is the best judge should have more say in the matter than the R.T.A. Exception is

taken to Ext.P7 decision of the R.T.A. and it is alleged that such a decision has been taken by the R.T.A. under the pressure and influence of the petitioner without visiting the place and that Ext.P7 being an arbitrary one is liable to be quashed. The averment of the petitioner that on account of the parking of taxis and autorickshaws in front of the shopping complex, travelling public and his customers are put to inconvenience is denied. It is contended that ample space has been given to the petitioner in front of his building and that he can have the right only to say that taxis shall not be parked within 5 metres' area in front of his building. He cannot have say in the matter of area beyond that.

5. The 2nd respondent-All Kerala Taxi Drivers' Welfare Association has also filed a counter affidavit. They deny the averments in the Writ Petition and point out that the petitioner is not a small fry. The petitioner has as many as 87 shop rooms in Pothencode Town and he is obstructing parking of taxi cars at all places in the Town. Ext.P2 sketch is not an accurate one and it is contended that there is enough space in the road margin where halting place for taxi cars is now provided under Ext.P4. By Ext.P4 no existing taxi stand is shifted over to the front of the petitioner's shopping complex. In fact, the existing

taxi stand as per Ext.P1 is retained and considering the increase in motor vehicles and traffic and also the road margin and availability of space, additional parking space has been provided. As regards the averments in the Writ Petition pertaining to Rule 344 of the Kerala Motor Vehicles Rules, it is contended that the said rule is irrelevant as far as this case is concerned. The said rule applies only in cases where the Regional Transport Authority determines the location of the bus stand and parking places. In the instant case, the Panchayat has determined the location of the taxi stand as provided under the Kerala Panchayat Raj (Landing places, Halting places, Cart Stands and other Vehicle Stands) Rules, 1995 and the said action is perfectly within the jurisdiction of the Panchayat. It is contended that previous sanction of the R.T.A. is not at all necessary for Exts.P4 and P8. Before Ext.P8 decision was taken, general public was heard. Ext.P8 was adopted as part of traffic reforms and considering the increase in vehicles and travelling public. As Ext.R2(a), copy of Ext.P8 is produced pointing out that Ext.P4 is not copy of the resolution. This counter affidavit also contends that Ext.P7 is the result of pressurisation tactics adopted by the petitioner on the R.T.A. Ext.P7 was issued in the wake of the contempt proceedings initiated by the petitioner. Ext.P6 affidavit was

also filed by the R.T.A. in this Court in the Contempt Case, only on account of the undue influence exercised on the R.T.A. by the petitioner. It is then contended that Ext.P7 has not attained finality and that Ext.P7 is being challenged in accordance with law. Even before signing and communication of the order, Ext.P7 has been given to the petitioner. This demonstrates the influence the petitioner is wielding on the R.T.A. Ext.P7 is not a speaking order at all. The relevant facts such as width of the road, road margin etc. have not been taken into consideration at all. Straightaway it has been concluded that implementation of Ext.P4 will cause road blocks. The width of the road and road margin is 17.5 metres. The details regarding the width of the road and road margin ought to have been given at least for the sake of clarity and for minimisation of arbitrariness. Ext.P7 is liable to be interfered with in appropriate proceedings. Ext.R2(b) series of photographs are produced along with this counter affidavit. These photographs will show that the petitioner's version regarding obstruction for the ingress and egress to his shopping complex is exaggerated and unreal.

6. I have heard the submissions of Sri.Siby Mathew, learned counsel for the petitioner, Sri.M.Rajagopalan Nair, learned counsel for

the 3rd respondent-Panchayat and Sri.Blaze K.Jose, learned counsel for the 2nd respondent-Association. I have also heard the submissions of the learned Government Pleader appearing for the 1st respondent.

7. Sri.Siby Mathew would draw my attention to Exts.P1, P2, P3, P5, P6 and P8 and also to Section 227 of the Kerala Panchayat Raj Act, 1994, Rules 3, 4, 5 and 6 of the Kerala Panchayat Raj (Landing places, Halting places, Cart Stands and other Vehicle Stands) Rules, 1995 and also to Rule 344 of the Kerala Motor Vehicles Rules. He would place reliance on the judgments of this Court in **P.T.Abdurahiman v. The Tribunal and others** (ILR 2006 (2) Kerala 734), **Sukumaran Nair v. Secretary, Vazhoor Grama Panchayat** (2003 (2) KLT 903) and **Abdurahiman v. Vengara Grama Panchayat** (2001 (2) KLT Sh.Notes p.85, Case No.107).

8. Mr.Blaze K.Jose, learned counsel for the All Kerala Taxi Drivers' Welfare Association would make submissions on the basis of the counter affidavit and the photographs placed on record by his party. He would submit on the authority of **Sunny Joseph v. State of Kerala** (2003 (3) KLT 247) that it is not correct to say that the R.T.A. is the authority to determine the location of taxi stand within the area of a local authority. It is the local authority which is having

primacy in the matter. Mr.Blaze K. Jose submitted that Ext.P7 order which is a non-speaking order and which has been passed without taking into account relevant considerations and without hearing the 2nd respondent who are affected parties is liable to be set aside in appeal. Immediate implementation of Ext.P7 will work out hardship.

9. Having considered the rival submissions addressed before me in the light of the pleadings raised by the parties, the documents placed on record and the relevant statutory provisions as explained by the various decisions cited at the Bar, I am of the view that the petitioner is entitled for relief. However, considering the submission of the counsel for the 3rd respondent-Panchayat and the 2nd respondent-Association that they have been served with copies of Ext.P7 only recently, I feel that time has to be granted to them for impugning Ext.P7 in appropriate proceedings. Accordingly the Writ Petition will stand allowed with the following directions:-

1. The 1st respondent shall not act upon Ext.P4 since Ext.P7 has now been passed by the R.T.A. rejecting the Panchayat's request for granting approval to Ext.P8.

2. The 1st respondent will ensure that taxis and autorickshaws are not parked in the stand identified as per Ext.P8, thereby implementing Ext.P7, within three weeks of receiving copy of this

judgment.

3. If Ext.P7 order comes to be stayed, modified or vacated by any competent authority, the 1st respondent will be informed of such stay, vacation or modification, and implementation of Ext.P7 will be subject to such stay, vacation or modification.

(PIUS C. KURIAKOSE, JUDGE)

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